GEORGE YAP LACK TEE

v.

TELECOMMUNICATION AUTHORITY OF SINGAPORE

HIGH COURT, SINGAPORE
LP THEAN J
[ORIGINATING MOTION NO. 80 OF 1990]
10 JULY 1991

ADMINISTRATIVE LAW: *Certiorari and mandamus - Dismissal - Theft charge - Committee of Inquiry - Inconsistencies and unconvincing evidence - Recommendation that applicant be given benefit of doubt - Staff Committee dismissed applicant in spite of report - Whether Staff Committee entitled to come to this conclusion - Supervisory powers of Court - Cannot interfere with inferior tribunal - On the ground of insufficiency of evidence - Telecommunications Authority of Singapore (Disciplinary Proceedings) Regs. 1983, Regs. 3,4,5, 6.*

The applicant was a principal clerk in the employ of the Telecommunications Authority of Singapore (Telecoms) whose duties included supervision of the Telecoms Recreation Centre, which entailed the handling of cash and attendance on the jackpot machines. On 18 April 1988, a police report was made by an employee of Telecoms that the applicant had stolen money from one of the jackpot machines. After interviewing the applicant, the police dropped the charge of theft against the applicant.

On 20 December 1988 the applicant was informed by the General Manager of Telecoms that disciplinary proceedings in accordance with Reg. 4 of the Telecommunications Authority of Singapore (Disciplinary Proceedings) Regulations 1983 (the Regulations) had been instituted against him on the charge of taking coins from the jackpot machine No. 2 and tampering with the said machine thereby conducting himself in a manner rendering him unfit to continue in his employment.

The applicant submitted an exculpatory statement as required. However, the exculpatory statement was found to be unsatisfactory and a Committee of Inquiry was appointed under Reg. 6(3) to enquire into and report to the Staff Committee of Telecoms.

An inquiry was duly held and the Committee of Inquiry reported that as there were inconsistent testimonies and unconvincing evidence, the case was doubtful and recommended that the benefit of doubt should be given to the applicant.

The Staff Committee having considered the report of the Committee of Inquiry came to the conclusion that the applicant was unfit to be in the service of Telecoms and should be dismissed. The applicant applied for an order of *certiorari* to quash the decision of Telecoms and an order of *mandamus* directing that he be reinstated in the service of the authority.

The issues were whether the Staff Committee ought to follow and accept the recommendations of the Committee of Inquiry and whether it was entitled to come to the conclusion which it did.

Held:

[1] All the procedural steps set out in Regs. 4, 5 and 6 of the Regulations had been complied with by Telecoms.

[2] The Committee of Inquiry and the Staff Committee each have different functions. The Committee of Inquiry is to investigate into the charges preferred against the applicant and to report to the Staff Committee which it did. In this connection, Reg. 4(4) expressly provides that the Committee of Inquiry is not a judicial or quasi-judicial body. The Staff Committee is to consider the report and determine whether the officer in question should be dismissed, reduced in rank, downgraded, or that some other punishments should be imposed. The Committee of Inquiry found the evidence adduced before it unsatisfactory in view of the inconsistencies, and recommended that the benefit of the doubt be given to the applicant. The Staff Committee, however, took a different view, and came to the conclusion that either both or one of the charges against the applicant had been proved and that he was unfit to be in the service of Telecoms and ought to be dismissed.

[3] The High Court in the exercise of its supervisory jurisdiction over inferior tribunals, will not interfere with the decision of the inferior tribunal merely on the ground of insufficiency of evidence.

[Applicant's application dismissed with costs.]

Cases referred to:
Heng Kai Kok v. Attorney-General of Singapore [1987] CLJ (Rep) 1090 ***(foll)***
V.C. Jacob v. Attorney-General [1970] 2 MLJ 133 ***(foll)***
Wong Kim Sang & Anor. v. Attorney-General [1982] 1 MLJ 176 ***(foll)***

Legislation referred to:
Telecommunication Authority of Singapore (Disciplinary Proceedings) Regulations 1983, Regs. 3, 4(1), (2), (3), (4), (7), (13), (14), 5(8), 6(1), (3)

For the applicant - Salem Ibrahim (Dedar Singh Gill with him)
For the respondent - Singa Retnam (Asokan with him)

JUDGMENT

LP Thean J:

By this motion, the applicant, George Yap Lack Tee (the applicant), applied for an order of *certiorari* to quash the decision of the Telecommunication Authority of Singapore dated 13 November 1989 and an order of *mandamus* directing that he be reinstated in the service of the authority.

The material facts that give rise to the present application are as follows. The applicant was at the material time a principal clerk in the employ of the Telecommunication Authority of Singapore (Telecoms) and had more than 31 years of service. He was attached to the recreation wing of the Telecoms, and his duties included supervision of the Telecoms Recreation Centre (Telerec) at the main Telecoms building called "The Comcentre". In the Comcentre, there is a multi-purpose hall in which there is a room which houses two jackpot machines. His duties included the handling of cash and also attendance on the jackpot machines when they were in a state of malfunction commonly called "tilt".

On 18 April 1988, a police report was made by Yeo Guek Leng Helen, an administrative officer of Telecoms, on the basis of the information of one Susila Nadarajah who was a clerk at the Telerec, that between 5 and 5.20 p.m. on 12 April 1988 the applicant stole money from one of the jackpot machines in the Telerec. In consequence, the applicant was interviewed by the police; also interviewed were Susila Nadarajah, Ahmad Yahaya, Aziz Jabal and Yeo Guek Leng Helen, all of Telecoms. The police interviewed the applicant again in October 1988 and subsequently decided to drop the charge of theft against the applicant.

However, on 20 December 1988, the applicant received a letter from the General Manager of Telecoms stating that disciplinary proceedings in accordance with Reg. 4 of the Telecommunication Authority of Singapore (Disciplinary Proceedings) Regulations 1983, had been instituted against him and three charges were framed as set out in the letter. These charges were subsequently amended and only two charges were preferred against the applicant, which were as follows:

> first, that you, George Yap Lack Tee, a principal clerk of the Telecommunication of Singapore, are charged that you did on or about 12 April 1988 between 1700 to 1715 hours, conduct yourself in such a manner rendering you unfit to continue in your employment with the Telecommunication Authority of Singapore, to wit, by taking coins which you were not entitled to from the jackpot machine No. 2 placed in the jackpot room at the Multi-purpose Hall, Comcentre;
>
> second, that you, George Yap Lack Tee, the principal clerk of the Telecommunication Authority of Singapore, are charged that you did, on or about 12 April 1988 between 1700 and 1715 hours, tamper with the jackpot machine No. 2 placed in the jackpot room in the Multi-purpose Hall, Comcentre, to wit, by opening the same when you are not required to do so and without having in your presence a witness and you have thereby conducted yourself in a manner rendering you unfit to continue in your employment with the Telecommunication Authority of Singapore.

The applicant was invited to state in writing any ground on which he might wish to rely to exculpate himself from the charges. In response, the applicant through his solicitors submitted an exculpatory statement. The exculpatory statement was not satisfactory and pursuant to Reg. 6(3) a Committee of Inquiry was appointed to inquire into the matter and to report to the Staff Committee of Telecoms. Accordingly, on 10 July 1989, the applicant was informed that the Staff Committee of Telecoms had appointed a Committee of Inquiry to investigate into the charges against him, and of the date of hearing of the inquiry.

The inquiry was duly held at which the applicant was represented by his Counsel, Mr. Salem Ibrahim, and Mr. Paul Chang, the legal officer of Telecoms, prosecuted the case against the applicant. Several witnesses were called. The material witnesses who gave evidence for the prosecution before the Committee of Inquiry were: Ahmad Yahaya bin Samsuddin, then the attendant at the Telerec; Aziz bin Jabal, an artisan of the PABX Department; Abdul Rashid bin Harun, a driver of the Radio, Maintenance and Project; Kamsan bin Sanib, an artisan in the Security, Fire and Safety Department, and Lawrence See, a technician in the Regulations and Licensing Department. Statements from these witnesses were taken and were put in evidence. The statement of Ahmad Yahaya, insofar as material, was this. At about 4.50 p.m., on 12 April 1988, the applicant was at the multi-purpose hall, and that one of the jackpot machines was on "tilt". The applicant was there at the time and he asked the applicant for assistance in rectifying the "tilt". The applicant opened the machine with his key and rectified the fault, and closed the machine. Both he and the applicant then left the jackpot machine room and went to the office. There, the applicant asked him to deliver an envelope to an officer in the Personnel Department which he did. He left at 5 p.m. and returned at about 5.20 p.m. At that time the applicant was still in the office.

The statement of Aziz was that on 12 April 1988 at about 5 p.m., he went to the multi-purpose hall to play the pin-ball machine. He first went to the office to change for some coins, and there he saw the applicant and heard him asking Ahmad to deliver an envelope to another department. After obtaining the coins, he left the office and he noticed that Ahmad also left the office with the envelope. He then went and played the pin-ball machine with Kamsan,

whilst Lawrence See, Ismail Awang and Rashid were watching them playing. In the midst of the game he heard a buzzing sound from the jackpot machine room; he went there and opened the door and saw the applicant at the jackpot machine putting coins into an envelope. He left the room and continued playing the pin-ball machine. About 5 minutes later he heard a second buzzing noise and also heard a "payment" sound. He then went to the jackpot machine room, and this time he was accompanied by Rashid and Kamsan. He asked the applicant what was happening and was told that the handle-bar was loose. They all then left the room and continued to play the pin-ball machine. Again, about 5 minutes later, he heard a buzzing sound for the third time, and he went into the jackpot machine room and saw the applicant again putting money into the envelope. He asked the applicant what had happened and was told that the machine was on "tilt" and that the handle-bar was loose. The applicant then closed the machine. He also asked the applicant what he would be doing with the money and the latter informed him that he would be returning the money to Telerec. Aziz then left the room for the pin-ball machine. He saw the applicant leaving the multi-purpose hall with the envelope.

Abdul Rashid's statement was to the effect that he was at the material time in the multi-purpose hall playing the pin-ball machine with Kamsan, and Aziz was also around. Subsequently, Aziz told them that the applicant had been taking money from the jackpot machine. They then proceeded to the jackpot machine room and from the doorway he saw clearly the applicant at the jackpot machine transferring some coins to a Telecoms envelope. Abdul Rashid then returned to play the pin-ball machine and he saw the applicant walking past him and leaving the multi-purpose hall with an envelope of the same size as the one he saw the applicant had earlier in the jackpot machine room. Kamsan's statement corroborated substantially that of Abdul Rashid. He also said that on being informed by Aziz he proceeded to the jackpot machine room and from the doorway observed that the applicant was triggering some mechanism in the jackpot machine and pulling the handle bar. He did not say, however, that the applicant put any coins into a Telecoms envelope.

Lawrence See's statement was slightly different. He said that on 12 April 1988, at about 5 p.m., he was in the multi-purpose hall. He happened to open the door to the jackpot machine room and he saw the applicant there standing by the jackpot machine, and was pulling the handle-bar of the machine, and there were about 20 to 30 coins on the tray. Lawrence See then left the jackpot room. He subsequently saw the applicant leaving the jackpot room with a Telecoms envelope. All these witnesses were examined and cross-examined on the statements they had given.

The applicant also gave evidence and his evidence was that on 12 April 1988, at about 4.20 p.m., he went to the Telerec, and there he attended to a "tilt" in one of the jackpot machines at the request and in the presence of Ahmad Yahaya. By 5 p.m. the multi-purpose hall was full of people; there were about 15 to 20 persons utilizing the facilities, which included the pin-ball machines, badminton court, billiard and jackpot machines. He sent Ahmad Yahaya to deliver a letter to the personnel department and Ahmad came back at about 5.20 p.m. The applicant then left the Telerec at about 5.30 p.m.

At the conclusion of the inquiry, the Committee of Inquiry made a report to the Staff Committee. In their report, the Committee of Inquiry dealt with the material evidence in some depth, and it is best to set out their deliberation and analysis of the evidence in full, which is as follows:

In deliberating on the case, the committee draw attention to the following points:

(1) There was essentially one person (Aziz bin Jabal) claiming to have witnessed the improper activities in the jackpot room. Two supporting witnesses were uncertain in a number of observations.

(2) That during the time when impropriety was committed, the jackpot room was deserted.

in deciding if the case could be considered to be one of theft (of money) or dishonest conduct.

We noted that the quality of memory of Aziz bin Jabal, the key witness, was selective and certain on the damning aspect and uncertain on others of the case. His testimony was inconsistent with those put forth by two supporting witnesses, Abdul Rashid bin Harun and Kamsan bin Sanib on what they saw.

One claimed hands were cupped to receive coins, another saw coins being put into envelope and the other did not see any coin being taken but saw only the envelope. Other inconsistencies observed were:

(1) Aziz bin Jabal should have complained to Ahmad Yahaya of alleged impropriety that evening.

(2) There was slamming of door each time George Yap enter the room in his written statement. In examination, Aziz bin Jabal claimed seeing George enter the room with an envelope and not the slamming of door.

(3) Abdul Rashid bin Harun was unclear whether anyone else was with him and Aziz bin Jabal in the jackpot room but was able to estimate 20 persons present at MPH at that time.

(4) His written statement could not corroborate with those put up by others.

(5) Kamsan bin Sanib, in examination, was clear that the envelope was there, yet there was no mention of it in the written statement.

We also established both from witnesses' testimonies, and our own observation at the jackpot room on the first day of hearing, that jackpot was the most popular game in contrast to the impression painted by Aziz bin Jabal that no one other than the three was around to witness the impropriety.

The failure to establish written instruction on the handling of the jackpot machine on 'TILT' and the need for a witness impairs the stand that wrongdoing was committed.

The conclusion we had drawn was that, with the inconsistent testimonies and unconvincing evidence, the case was doubtful.

We therefore recommend to the Staff Committee that the benefit of doubt should be given to the accused.

The Staff Committee considered the report of the committee of Inquiry and acting under Reg. 6(l) decided that the applicant be dismissed from service. Therefore, on 13 November 1989 or thereabouts, the applicant was informed by a letter of that date that the Staff Committee after considering the report of the Committee of Inquiry had decided that he should be dismissed from service with effect from the date of the letter. The applicant was accordingly dismissed from service. The Staff Committee did not make any express finding whether the applicant was guilty of both the charges preferred against him or of either of them. Plainly it did not accept the recommendation of the Committee of Inquiry. It is apparent that the Staff Committee, having considered the report, and in particular the evidence discussed and analyzed by the Committee of Inquiry, was of the opinion that he was unfit to be in the

service of Telecoms and should be dismissed. The question therefore is whether the Staff Committee was entitled to come to that conclusion. Before I consider this question, I would like to dispose of one subsidiary point raised on behalf of the applicant.

After the hearing before the Committee of Inquiry was concluded both parties were required to put in their written submissions. In the written submission made by Mr. Paul Chang it was alleged, *inter alia*, that only one witness was interviewed by the police arising out of the report lodged against the applicant. That was not correct, and Mr. Salem Ibrahim on behalf of the applicant on 28 August 1989 wrote to the Chairman of the Committee of Inquiry enclosing a statement of the applicant stating that four witnesses were interviewed, namely: Helen Yeo, Susila Nadarajah, Aziz Jabal and Ahmad Yahaya. Arising from this Mr. Paul Chang wrote an "internal memorandum" to the Chairman, but no copy was extended to the applicant, notwithstanding that a request therefore was made on behalf of the applicant. By that memorandum Mr. Paul Chang referred to the letter of Mr. Salem Ibrahim and sought to explain what he meant in his submission that only one witness was interviewed by the police, and he conceded that the persons named in the applicant's statement were also interviewed by the police. Mr. Paul Chang was, in my view, unnecessarily argumentative in respect of that point, and he also addressed the question as to why the police decided not to proceed with the charge of theft against the applicant. That was pure speculation on his part. Surprisingly, he did not consider it proper that a copy of that memorandum should be extended to Mr. Salem Ibrahim, which undoubtedly he ought to have done so. It was contended by Counsel for the applicant that this was a breach of the rules of natural justice. There is no merit in this argument. What was stated in the internal memorandum had no relevance to the inquiry. It is apparent from the report that the Committee of Inquiry did not take into account what was said in the internal memorandum. Further, no copy of the internal memorandum was given to the staff committee. Nothing of importance really turned on that incident.

The main argument made on behalf of the applicant was that in this case the Staff Committee ought to follow and accept the recommendation of the Committee of Inquiry and was not entitled to come to the conclusion which it did. To this argument there are clearly two authorities in the way. The first is *Wong Kim Sang & Anor. v. Attorney-General* [1982] 1 MLJ 176. There, two charges against two police officers were inquired into by an inquiry committee appointed by the Public Service Commission upon allegations made against them. The inquiry committee conducted an inquiry and reported to the Public Service Commission that the two charges against the two officers had not been proved. Nonetheless, the Public Service Commission after considering the facts of the case and the report of the inquiry committee decided that they should be dismissed and they were dismissed. In consequence, the officers took out a writ against the Attorney-General. It was argued on behalf of the plaintiffs, *inter alia*, that the Public Service Commission had no power to differ from the findings of the inquiry committee. This was rejected. Kulasekaram J in his judgment said, at p. 180:

> Now, Regs. Nos. 3 and 4 of these Regulations refer to the procedure to be adopted in the case of disciplinary proceedings that are to be taken against the plaintiffs here. It will be observed the PSC having considered what was alleged against the plaintiffs here. It will be observed the PSC having considered what was alleged against the plaintiffs and the exculpatory statements made by them on the charges preferred against them decided in accordance with Reg. 4(3) of the Regulations to appoint a Committee of Inquiry to inquire into the matter and to submit its report to the PSC. Regulation 4(7) of the Regulations provides that the record of the proceedings of the Committee shall consist of information obtained by the Committee and a report by the Committee and Reg. 4(13) of the Regulations further provides that the Committee shall within 14 days of the conclusion of the proceedings submit its report to the

> PSC. Regulation 4(14) of the Regulations further provides that the PSC may upon considering the report of the Committee if it is of the opinion that the police officer should be dismissed from the service or reduced in rank may dismiss or reduce the rank of the officer or may impose some other punishment other than the dismissal or reduction in rank. This clearly shows that the Committee appointed under the Regulations is only for collecting the information and reporting on the case. Its function, it would appear, is not to make any finding as to whether the officer is guilty or not guilty on the charge. That is a matter left entirely to the PSC after considering the report of the Committee. If the Committee in its report makes any findings as to the guilt or otherwise on the charge preferred against the subordinate officer concerned it is purely expressing its opinion and no more, and it is at best a matter which may be taken into consideration by the PSC and is by no means binding on the PSC.

He later said:

> In all these circumstances I find there are no merits whatever in plaintiffs' Counsel's submission under this head. The PSC were perfectly entitled to differ from the views of the Committee on the question of whether the officers concerned were guilty on the charge or not. In the instant case here, having considered the report which includes the whole of the records of proceedings including the information obtained by the Committee, and its report to the PSC, the PSC acting within its powers, found that that the first charge in respect of each of the plaintiffs had been proved and proceeded to impose the punishment which was within its powers to do and they accordingly dismissed them from the service.

The second case is *Heng Kai Kok v. Attorney-General of Singapore* [1987] CLJ (Rep) 1090. It is also a case in which a police officer claimed that his dismissal from service was null and void and the facts there were on all fours with those in *Wong Kim Sang*. Chan Sek Keong J followed the decision of Kulasekaram J and held that the functions of the Inquiry Committee and the Public Service Commission were mutually exclusive and that the former was not a delegated body of the latter. He said, at p. 1095:

> As to the first point, the scheme of disciplinary proceedings under the 1970 Regulations envisages (a) the preferment of a charge against a public officer; (b) the submission of an exculpatory statement by the person charged; (c) the consideration by the PSC of the exculpatory statement; (d) the appointment of an Inquiry Committee of 3 members to inquire into the charge and to submit a report to the PSC; (e) the consideration by the PSC of the report including the record of the proceedings and the making of their decision. The respective functions of the Committee and the PSC are mutually exclusive. The Committee are not a delegated body of the PSC for the purpose of making any decision; they are not a judicial or quasi-judicial body and they have no power to make any decision in an inquiry. No decision can emanate from the Committee. As Kulasekaram J said in *Wong Kim Sang*, any decisions purportedly made by the Committee are nothing more than expressions of opinions. The PSC may have to act judicially or quasi-judicially by the very nature of the power they exercise and the decisions they make which can affect the livelihood of public officers (including subordinate police officers in the appropriate cases), but they are not obliged to give reasons for their decisions.

In this case, a similar scheme of proceedings is provided in Regs. 4, 5 and 6 of the Telecommunication Authority of Singapore (Disciplinary Proceedings) Regulations 1983. It was represented to the chief executive of Telecoms that the applicant had been guilty of misconduct or neglect of duty and the chief executive was of the opinion that the subject of complaint warranted proceedings with a view to dismissal: Regulation 4(1). Pursuant to Reg. 4(2) the applicant was notified in writing of the charges preferred against him and he was given an opportunity to exculpate himself in writing. The exculpatory statement was submitted and was not satisfactory; the chief executive recommended to the Chairman of the Staff Committee to appoint a Committee of Inquiry to inquire into the matter: Regulation 4(3). The

Committee of Inquiry was appointed and held its inquiry in accordance with Reg. 5. After the inquiry was concluded the Committee of Inquiry submitted its report to the staff committee through the chief executive: Regulation 5(8). The report was considered by the Staff Committee, and the staff committee was of the opinion that the applicant should be dismissed and he was accordingly dismissed. All the procedural steps set out in Regs. 4, 5 and 6 have been complied with by Telecoms.

Following the reasoning in *Wong Kim Sang* and *Heng Kai Kok*, the Committee of Inquiry and the Staff Committee each have different functions. The Committee of Inquiry is to investigate into the charges preferred against the applicant and to report to the Staff Committee which it did. In this connection, Reg. 4(4) expressly provides that the committee of inquiry is not a judicial or quasi-judicial body. The Staff Committee is to consider the report and determine whether the officer in question should be dismissed, reduced in rank, downgraded, or that some other punishments should be imposed. The Committee of Inquiry found the evidence adduced before it unsatisfactory in view of the inconsistencies, and recommended that the benefit of the doubt be given to the applicant. The Staff Committee, however, took a different view, and came to the conclusion that either both or one of the charges against the applicant had been proved and that he was unfit to be in the service of Telecoms and ought to be dismissed. As in *Wong Kim Sang* and *Heng Kai Kok*, the Staff Committee here is not bound to follow the recommendation of the Committee of Inquiry. The Staff Committee is entitled on a review of the report of the Inquiry Committee to come to the decision which it did. Plainly, on a close examination of the evidence discussed in the report of the Committee of Inquiry there was evidence which supported the decision of the Staff Committee. Therefore, it cannot be argued that the Staff Committee has come to a decision so unreasonable that no reasonable Committee would ever have come to.

It also cannot be argued, as the Counsel for the applicant sought to do so, that there was insufficient evidence for the Staff Committee to found its conclusion. *In V.C. Jacob v. Attorney-General* [1970] 2 MLJ 133 the plaintiff was dismissed from public service. Prior to that, disciplinary proceedings were taken against him and an Inquiry Committee was appointed by the Public Service Commission. In the report to the Public Service Commission acting in accordance with the Public Service (Disciplinary Proceeding) Regulations 1962 the Inquiry Committee advised the Yang di-Pertuan Negara to dismiss the plaintiff from public service and he was dismissed. One of the arguments before the Court was that there was no basis upon which any reasonable person or body of persons would come to the conclusion that the plaintiff was guilty of the charges. This was rejected. Wee Chong Jin CJ in his judgment said, at p. 135:

> First, I will deal with the second ground. The plaintiff contends that even if the Public Service Commission had power to dismiss him there was no basis upon which any reasonable person or body of persons could come to the conclusion that he was guilty of the allegation made against him because there was no sufficient evidence to warrant that conclusion and this Court, in the exercise of its supervisory jurisdiction, ought to interfere. I cannot accept that contention for it has been said on many occasions by the Courts in England - and the law on this point is the same here as in England - that the High Court in the exercise of its supervisory jurisdiction over inferior tribunals will not interfere merely on the ground of insufficiency of evidence.

For the reasons I have given, this application must fail, and is dismissed with costs.

Also found at [1991] 3 CLJ 1926